

### **REMARKS**

Claims 30, 38, 39, 43, and 44 remain in the application. Claims 30 and 38 are the only claims in independent form. Claims 22-24, 31-33, 40-42, and 45-50 have been canceled without prejudice, in order to expedite the allowance of the present application. Further, claims 1-21, 25-29, and 34-37 have been canceled since they are directed towards non-elected claims.

Specifically referring to the Office Action, claims 30 and 38-50 have been rejected under 35 U.S.C. §112, first paragraph, as containing subject matter that was not described in the specification in a manner as to enable one skilled in the art to which it pertains, or with which it is nearly connected, to make and/or use the invention. More specifically, the Examiner holds that one skilled in the art cannot be assured of the ability to practice the invention as claimed in the absence of the availability of the expression plasmid pGTE#2flhB of the claimed invention. The Examiner holds that evidence of public availability of the expression plasmid of the claimed invention is required.

In response thereto, Applicants assure that the deposit has been made under the provisions of the Budapest Treaty and enclosed herewith is a copy of the deposit receipt for the claimed plasmid. Additionally, enclosed herewith is an Affidavit stating that the deposit has been accepted by the International Deposit Authority under the provisions of the Budapest Treaty and that all restrictions upon public access to the deposit will be irrevocably removed upon the grant of a patent on the present application. As a result, reconsideration of the rejection is respectfully requested.

Claims 30 and 39-50 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. More specifically, the Examiner holds that claim 30 is vague with regard to the recitation of the phrase “an isolated nucleic molecule comprising SEQ ID No: 1.” The Examiner has suggested that the claim be rewritten to claim “an isolated polynucleotide sequence as set forth in SEQ ID No: 1.” In response thereto and in accordance with the Examiner’s suggestions, claim

30 has been rewritten to claim an "isolated polynucleotide sequence as set forth in SEQ ID No: 1. . ." As a result, reconsideration of the rejection is respectfully requested.

Claim 38 has also rejected under 35 U.S.C. §112, second paragraph. More specifically, claim 38 has been rejected for being vague with regard to the recitation of the phrase "of pgTE#2flhBHGAL (Accession No. NMOO/16477)." In response thereof and in accordance with the Examiner's suggestions, claim 38 has been amended by removing the parentheticals to further clarify the claimed invention. Reconsideration of the rejection is respectfully requested.

Finally, claims 40-42 and 45-50 have been objected to as being dependent upon canceled claims 31 and 33. In response thereto, these claims have been canceled with prejudice in order to expedite the allowance of the present application. Reconsideration of the rejection is respectfully requested.

Finally, the Examiner holds that claims 1-21, 25-29 and 34-37 must be canceled because they are drawn towards non-elected claims. In response thereto, these claims have been canceled from the present application in order to place the present application in condition for allowance.

The remaining dependent claims not discussed above are ultimately dependent upon at least one of the independent claims discussed above. No prior art reference makes up for the deficiencies of that reference as applied against the independent claims as no prior art reference discloses or suggests the invention as set forth in the claims as discussed in detail above.

It is respectfully submitted that the present amendment places the application in condition for allowance as it removes all remaining issues in dispute. Specifically, the amendment follows suggestions set forth in the Office Action and clarifies the present invention. As a result, no remaining issues are in dispute. Since there is no prior art cited against any of these claims, it is respectfully submitted that all of the claims are in condition for allowance. It is also respectfully submitted that the present amendment places the application in condition for appeal. The claims have not been made broader in scope, thereby requiring no further searching nor raise any new

issues. In fact, all claims now include limitations of previously pending claims and were therefore previously searched.


It is respectfully requested that the present amendment be entered in order to place the application in condition for allowance or at least in better condition for appeal. The application is placed in condition for allowance as it addresses and resolves each and every issue that remains pending. The claims have also been amended to clearly distinguish them over the prior art. The application is made at least in better condition for appeal as the amendment removes any issues thereby simplifying the issues on appeal. That is, each and every rejection has been overcome. Hence, it is respectfully requested that the amendment be entered.

Applicants respectfully request to be contacted by telephone if any remaining issues exist.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

KOHN & ASSOCIATES, PLLC

  
Kenneth I. Kohn, Reg. No. 30,955  
30500 Northwestern Highway  
Suite 410  
Farmington Hills, MI 48334  
(248) 539-5050

Dated: August 19, 2004

CERTIFICATE OF MAILING

Express Mail Label No.: EV508826541US  
Date of Deposit: August 19, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" addressed to Commissioner for Patents, Mail Stop AF, P.O. Box 1450, Alexandria, VA 22313-1450.

  
Connie Herty



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Everett Lee Rosey, et al.

Serial No. 10/010,160

Group Art Unit: 1645

Filed: 11-09-01

Examiner: BASKAR, Padmavathi

For: NOVEL THERAPEUTIC COMPOSITIONS FOR  
TREATING INFECTION BY LAWSONIA SPP.

Attorney Docket No: 3153.00297

**AFFIDAVIT**

I, Kenneth I. Kohn, do hereby state that plasmid pGTE #2 flhB AGAL Accession number NM00/16477 has been deposited under the provisions of the Budapest Treaty and with the Australian Government Analytical Laboratories, P.O. Box 385, Pymble NSW 2083, Australia, November 8, 2000. The plasmid has been accepted by an International Depository Authority, under the provisions of the Budapest Treaty. Moreover, all restrictions upon public access to the deposit will be irrevocably removed upon the grant of a patent on this application.

Kenneth I. Kohn, Reg. No. 30,955  
30500 Northwestern Highway  
Suite 410  
Farmington Hills, Michigan 48334  
(248) 539-5050

Dated: August 19, 2004

**CERTIFICATE OF MAILING BY "EXPRESS MAIL"**

Express Mail Mailing Label No.: EV 508826541 US  
Date of Deposit: August 19, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop: AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Connie Herty

BUDAPEST TREATY ON THE INTERNATIONAL  
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS  
FOR THE PURPOSES OF PATENT PROCEDURE



INTERNATIONAL FORM

[ TO  
Victorian Institute of Animal Science  
475 Mickleham Rd  
Attwood Victoria 3049

] RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT  
issued pursuant to Rule 7.1 by the  
INTERNATIONAL DEPOSITARY AUTHORITY  
identified at the bottom of this page

Attention: Dr Dadna Hartman  
NAME AND ADDRESS  
[ OF DEPOSITOR ]

<b>I IDENTIFICATION OF THE MICROORGANISM</b>	
Identification reference given by the DEPOSITOR:  E.coli-pGTE2	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY:  NM00/16477
<b>II SCIENTIFIC DESCRIPTION AND/OR PROPOSED TAXONOMIC DESIGNATION</b>	
The microorganism identified under I above was accompanied by:  <input checked="" type="checkbox"/> a scientific description  <input type="checkbox"/> a proposed taxonomic designation (Mark with a cross where applicable)	
<b>III RECEIPT AND ACCEPTANCE</b>	
This International Depository Authority accepts the microorganism identified under I above, which was received by it on 8 Nov 2000 (date of the original deposit)	
<b>IV RECEIPT OF REQUEST FOR CONVERSION</b>	
The microorganism identified under I above was received by this International Depository Authority on (date of original deposit) and a request to convert the original deposit to a deposit under the Budapest Treaty was received by it on (date of receipt of request for conversion)	
<b>V INTERNATIONAL DEPOSITARY AUTHORITY</b>	
Name: AUSTRALIAN GOVERNMENT ANALYTICAL LABORATORIES Address: PO BOX 385 PYMBLE NSW 2073 AUSTRALIA Phone: (02) 9449 0111 Facsimile: (02) 9449 1653	Signature(s) of person(s) having the power to represent the International Depository Authority or of authorised official(s)   Date: 8 Nov 2000

1 Where Rule 6.4(d) applies, such date is the date on which the status of International Depository Authority was acquired.